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LEGISLATION AND LITIGATION

CONNECTED WITH THE

LAND BANK OF 1740.

BY

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LEGISLATION AND LITIGATION CONNECTED WITH THE LAND BANK OF 1740.

THE Act of Parliament for restraining and preventing several unwarrantable schemes and undertakings in his Majesty's Colonies and Plantations in America reached Boston in July, 1741. Although the subscribers to the Land Bank might have taken exception to some of the statements made in the preamble to this Act, yet there was no room for doubt that it was specially directed against that Company and that the phrase "sundry other schemes, societies, partnerships, or companies" was introduced to cover the case of the Silver Bank. There is no reason to suppose that Parliament could have had notice that there was under discussion at that very time a plan to establish a local Land Bank in Ipswich, nor that there were other similar propositions in the air. It was on the 27th of March that Wilks wrote:—¹ "A bill has just passed the House of Commons to extend the Act commonly called the Bubble Act, passed in 1720, to the plantations in America," but it was not until April 3, that Edward Eveleth and others, representing the proposed Ipswich Bank, presented a petition to the General Court² setting forth that they had projected a medium of trade by bills of credit which they proposed to emit, and praying for the approbation of the Court.

The subscribers to the Land Bank reluctantly accepted the situation, and took such steps as relieved the Company

¹ Archives, 53, 77.

² Court Records, XVII, 536.
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from possible charge of actively resisting the enforcement of the Act of Parliament. There were many among them who were prepared to continue operations in defiance of the authorities, but the counsel prevailed of those who advised winding up the Company, and measures were taken for the voluntary liquidation of its affairs. The Act which had compelled this proceeding, had, by its terms, rendered null and void every contract made by the Company. Among these, the bills which had been emitted, should, by strict interpretation, have been included, yet every subscriber was made liable for them in the hands of any possessor. It was apparently impossible to enforce any legal process in behalf of the Company, while its obligations were recognized as continuously existing, liability for the same having devolved upon the individual partners.

The notes of the Company, although issued on the basis of six shillings and eight pence an ounce for silver, the then recognized par value of lawful money in the Province, were, by their terms, not redeemable for twenty years, and could then have been satisfied by the Company in produce. It is obvious that these features must have caused them to circulate at a discount from their nominal face value, but just what that discount was can not be determined. Hutchinson is authority for the statement that many of them were obtained by possessors at one-half their expressed value. Their compulsory and immediate redemption at their face value was a hardship upon the subscribers, and it is upon the whole creditable that in the chaotic condition of their affairs caused by the annulment of all their contracts by Act of Parliament, the subscribers themselves were ultimately enabled to draw in a little over ninety-five per cent. of the circulation of the Land Bank. It was evident, however, in the spring of 1742, that they had accomplished about all that they could without aid from the General Court, and that in the adjustment of the various conflicting interests with which they were surrounded,

legislation of some sort was absolutely necessary. When this conclusion was reached, application was made to the General Court for relief.¹

In August, 1741, just after the arrival in the Province of the Act of Parliament, the General Court had taken the matter under consideration, and had carried through to the point of engrossment, "An Act to subject the bonds and Mortgages given by the undertakers and their sureties in the Silver and Manufactory Schemes to the payment of possessors of bills."²

Apparently this bill was abandoned at the intercession of the Land Bank Company, for in the petition for relief referred to above, which was presented in March, 1742, the subscribers express their gratitude that at the request of the same memorialists the General Court had refrained from enacting a bill which was under consideration in September, 1741, which bill was framed in such a manner as tended to distress said Company.

The motives which led to this prolonged attempt to wind up the Company without legislative interference are apparent, as are also the difficulties which compelled the subscribers to solicit the aid of the law-making power. On the one hand, it was almost impossible to legislate with reference to the Company without recognizing contracts which the Act of Parliament declared invalid. On the other hand, it was not easy to procure from the solvent subscribers even their own proportionate contributions towards closing up affairs, not to mention the fact that enough must also be raised to cover delinquencies and losses in trade. The Directors, from the outset, realized that if subscribers would escape persecution, those who were able must pay more than what seemed to be their proportionate share towards the adjustment of affairs, but a committee of

¹ Archives, 59, 326.

² Court Records, $\frac{\text{XVII}}{3}$, 96, 99.

the partners appointed at the last meeting of the Company to adjust and settle the accounts of the partners, published in October, 1741, in the *News-Letter*, a report to the effect that the Directors had made an excessive assessment and gave their advice to partners as to how much ought to be paid. This committee was composed of three members, and in the March following, two out of three concluded that it was their duty to petition for the legislation necessary to clear up the confusion, for which it is evident that they were in part responsible. Their motives were undoubtedly good in thus advising partners. They believed that the losses in trade were improperly distributed, but it would have been better for all to have hurried through an adjustment of affairs on any terms.

The result of this application in March, was the passage of a resolve April 3 by the General Court for the appointment of a Joint Committee¹ with full power to wind up the affairs of the Company, to pay off its indebtedness, destroy the bills and distribute the proceeds. In this resolve, the outstanding contracts of the Company were practically recognized, and for that reason the Governor withheld his consent. A second resolve, authorizing the appointment of a Committee to examine and report as to the amount of bills outstanding and from whom they were due, so that effectual care might be taken to cause the outstanding notes to be brought in, was passed April 23,² and to the measure in this form the Governor consented. These resolves must be those which are referred to by Shirley under the phrases Order No. 1 and Order No. 2 in his letter to Lord Wilmington, April 30, 1742,³ wherein he says :

. . . the Assembly and Council upon the petition of the worthier part of each of the late Companies pass'd

¹ Archives, 59, 326 *et seq.*

² Archives, 102, 225.

³ Hist. MSS. Com. Report 11, Appendix, Part IV., 292.

one of the enclosed orders No. 1, and the most earnest solicitations have been made to me by the sufferers to give my consent to it; but as the remedy proposed by it is at the bottom founded upon the supposed subsistence of the mutual agreements and contracts made at first between the directors and partners of each of the Companies, which are deem'd and declared by the Act of Parliament to be illegal and void *ab initio*, I could not possibly come into it. But to retrieve the sufferers and preserve the public peace and quiet, so far as was in my power, I form'd and promoted the inclosed order of the General Court, No. 2, which is consistent with the Act, and I understand has considerably alarm'd the deficient partners, and will, I hope, help to make the Act of Parliament have its full effect, and draw in all the outstanding Bills properly.

Two things are to be noted in connection with this first effort at legislation with regard to the Land Bank: first, the attempt to avoid submission to the Privy Council for approval as shown through the adoption of the form of a resolve in preference to an act; and second, the temper of people which made it necessary that Shirley should let something go through in order to preserve the public peace and quiet.

May 27, a petition by Joseph Parmenter and a number of others¹ was presented to the General Court, setting forth that notwithstanding their speedy compliance with the Act of Parliament, their estates were exposed to the demands of possessors of bills, through the wilful neglect of some of the partners to pay in their quotas, that demands had been made upon some of the petitioners for the exchange of large sums of the bills, that proceedings were actually pending against some of them, and that they were exposed to more and greater demands, wherefore they prayed for relief.

From this, it would appear that up to this point popular sympathy for those whom Shirley termed "the sufferers," was powerful enough to protect them against the attacks of

¹ Archives, 102, 243.

speculators. The time had now arrived when this was no longer to be possible. The attitude of the possessors of bills had already been brought to the attention of the General Court, March 17,¹ in a petition in which Nathaniel Martyn and several others asserted that they were possessors of considerable sums of the notes, which had been discredited even before the Act of Parliament and which the partners now refused to redeem. Unless assisted by the General Court the petitioners alleged that they would "be obliged, though with reluctance, to proceed with and augment prosecutions against the said Partners on the said Act in order to acquire their just rights." The petition then goes on to say, that "if they are necessitated to do the same, the conditions and circumstances of the Partners are such as will render it absolutely necessary, and the tenor of the said bills and of the said Act make it very convenient, to prosecute a great number of them, and that without regard to them who have satisfied their directors." The minatory character of this petition foreshadowed what was to take place, and although the possessors would appear to have abstained temporarily from prosecuting their claims, in order that the General Court might signify its intentions in the premises, yet towards the end of May and in the early part of June a number of suits were inaugurated, the name of Nathaniel Martyn, the leader of the petition, figuring conspicuously as plaintiff in the suits.

It is perhaps a measure of the number of these suits that were expected to be brought, that a special blank form of writ was issued, which contained a declaration in a plea of debt based upon the steps taken in the organization of the Land Bank and the issue of the bills.² A number of these bills, the printed declaration alleged, had been received by the plaintiff at the value expressed therein, and neither the defendant nor anybody else would take them from the plaintiff at that value, but they rested in his hands useless,

¹ Archives, 102, 210.

² Suffolk Files, 55,507.

whereof the defendant had notice, and so by the statute in that case provided became chargeable to the plaintiff for the amount named in lawful money with interest from the date of said bills. The writ opened with the ordinary instruction to the sheriff to attach the estate of the defendant, or for want thereof to take his body. At a later date, another form came into use which was a mere summons to the defendant to appear.¹ There were some changes of phraseology, but they were slight.

The petition of Parmenter and others was referred to a Joint Committee and June 30 reports on the condition of the two companies were submitted by John Jeffries.² It appears by the report on the Land Bank there were then outstanding between sixteen and seventeen thousand pounds of Land Bank bills, but that the returns were daily coming in. The consideration of this report was postponed to the next session.³

On the 13th of September, 1742,⁴ the directors petitioned the Council for relief, asserting that they had done their utmost to bring in and destroy the bills, but many of the partners obstinately neglected and refused to aid them. They therefore prayed the Board to take such steps as would force the delinquents to comply with the law. The Council thereupon ordered the Attorney-General to prosecute all such delinquent partners as should incur the pains and penalties of *premunire* under the Act of Parliament.⁵ In pursuance of these instructions, John Overing, Attorney-General, proceeded to lodge information against some of the more conspicuous of the delinquents,⁶ and to prosecute them in the Superior Court of Judicature. As a result of these proceedings, he was enabled to bring some of the recalcitrants to terms. Others were able to evade

¹ Suffolk Files, 59,692.

² Archives, 102, 260, 262.

³ Court Records, $\frac{XVII}{3}$, 450.

⁴ Council Records, 10, 657.

⁵ Archives, 102, 264.

⁶ Suffolk Files, 56,660, 56,663, 57,190, 57,526.

service and escape. As a whole, but little was accomplished by the prosecutions.

On the fifteenth of January, 1743, the General Court passed to be enacted a bill entitled an Act for the more speedy finishing the Land Bank or Manufactory Scheme.¹ The Governor in his speech on the same day alluded to this act,² saying that while he would be glad to promote the ends aimed at by the bill, it interfered with the Act of Parliament and was of an extraordinary nature. Furthermore, he was obliged to submit all bills for approval before signing, and by its terms this Act might have its entire effect before it could be submitted.

June 18, a second bill, of the same title as the former, passed both houses to be enacted.³ June 25, the Governor stated in his speech, that this bill must lie for consideration till the next meeting,⁴ as he expected to hear from the Lords Commissioners of Trade. September 9, he had heard nothing concerning its fate,⁵ and it is evident that the bill was not approved, for on November 10 another bill bearing the same title passed both houses⁶ to be enacted, and November 12 it was ordered to be published in the *Boston Gazette*.

This act was originally introduced in the house on the 5th of November.⁷ On the 7th, Shirley transmitted a copy to the Lords of Trade.⁸ From the letter which

¹ Court Records, $\frac{\text{XVII}}{3}$, 611, 617.

² Court Records, $\frac{\text{XVII}}{3}$, 621.

³ Court Records, $\frac{\text{XVII}}{4}$, 74, 83, 91.

⁴ Court Records, $\frac{\text{XVII}}{4}$, 118.

⁵ Court Records, $\frac{\text{XVII}}{4}$, 128.

⁶ Province Laws, III., 118, Ch. 17, 1743-44.

⁷ Court Records, $\frac{\text{XVII}}{4}$, 195.

⁸ Province Laws, III., 138.

accompanied this copy we can ascertain the objections to the bill of June 18th. It is needless to go into detail in this matter. In a general way it may be said that the objections were that the powers given to the Commissioners to wind up the bank were too arbitrary. The Governor pointed out that though the methods employed were the same, the powers conferred by the new bill upon the Commissioners were curtailed, and the rights of partners were protected by giving them the right of appeal. Possessors of bills still retained all rights conferred by the Act of Parliament.

The bill was divided into eleven sections. In the first, John Jeffries, Samuel Danforth and John Chandler were named as Commissioners, and power was conferred upon them, or any two of them, to order and adjust all the affairs and business necessary for the just and equal finishing of the Land Bank or Manufactory Scheme. In the second section, power was given these Commissioners to examine persons under oath, in order to discover concerning the affairs and trade of the Company; to get possession of books, papers and writings relating to its officers; to discover its debts and credits, the quantity of bills emitted, and the proportion due from directors and partners for the redemption of outstanding bills. Power to assess partners for their proportion of the bills of the Company was conferred in the third section, and after such assessment had been approved and allowed by the Great and General Court, suit could be brought for the same, or the Commissioners could raise the money by mortgaging in their own names the estate that the partner had originally mortgaged to the Land Bank. To prevent alienations or conveyances of these estates of partners, such estates were declared to be bound and held for the assessments from the day of the publication of the Act to the same extent as if they had been attached in an ordinary suit at law. Power was given the Commissioners in the fourth section to sue debtors of

the Land Bank for money, goods, or effects, due from them to the Company. The fifth section conferred upon the Commissioners power to assess the losses incurred by the Company in trade, and after the assessment had been approved to sue for the same.

The sixth section was an allegation that none of these proceedings should be held to interfere in any way with the rights of possessors of bills to sue partners. By the seventh section, the Commissioners were required to report at the session beginning May, 1744, and any partner who felt aggrieved could appeal to the courts, but to perfect his right to do so was required to file his notice of appeal before that session began. If any question of fact arose between such partner and the Commissioners, provision was made for its trial. All mortgages of lands of partners made by the Commissioners were by the eighth section declared to be good. All suits under this Act were to be brought in the County of Suffolk. As possessors had power to bring suits elsewhere, it was provided in the ninth section that bills lodged in court in such suits should be delivered to the Commissioners. The tenth and eleventh sections relate to allowances to the Commissioners and to the method of filling vacancies in the Commission.

A bill entitled "an Act in further addition to and explanation of an Act for the more speedy finishing of the Land Bank or Manufactory Scheme, was passed in February, 1744,¹ defining more particularly the circumstances under which it was the duty of courts, laid down in the ninth section of the original Act, to forward bills to the Commissioners. This was not to be done unless the judgments of the possessors had received full satisfaction.

On the twelfth of November, after the publication of the Act for finishing the Land Bank, the General Court awarded

¹ Prov. Laws, III., 135, ch. 28, 1743-44.

the Commissioners the "use of the room at the west end of the Court House, in Boston, where the Assessors used to sit."¹

The Commissioners entered upon their duties in November, 1743. It was supposed that they could easily master the affairs of the Company, make their assessments, and report at the May session. The only right of appeal vested by this Act for finishing the Land Bank in the assessed partner, was dependent upon his filing a notice of his intention to contest the decision of the Commissioners prior to the beginning of the May session. It was not until August sixteenth that the Commissioners were able to report that they had made their first assessment, and this was only laid upon thirty-seven of the partners who were totally delinquent. If there was any object in allowing the right of appeal in the original Act, it was essential that the time should be extended, and as it was evident that the time when the Commissioners could make future assessments upon other classes of partners or upon the subscribers as a whole, was indeterminate, it was clear that some change would be required in the act to cover this point for future assessments.

For the foregoing reasons the General Court passed, August 18,² an Act in further addition to and explanation of an Act for the more speedy finishing of the Land Bank or Manufactory Scheme. For the assessment of August sixteenth the time for appeals was extended to September 7, and the Commissioners were ordered to publish the list in the four weekly prints called the *Boston Weekly Postboy*, the *Boston Evening Post*, the *Boston Gazette or Weekly Journal*, and the *Boston Weekly Newsletter*. Future assessments were to be published in the same newspapers, and fourteen days after notice by publication were allowed for appeals.

The same day that this Act was published, the General

¹ Archives, 59, 346.

² Prov. Laws, III., 172.

Court by resolve authorized the Commissioners to receive a large amount of bills then in the hands of the late directors of the Land Bank¹ and to destroy them, and they were further authorized to burn such bills as they should from time to time thereafter receive.

November 8 the Commissioners made a second assessment, this time directed against partial delinquents, of whom the names of forty-six appear in the published list. On the fourth of December, Jeffries made a report of his doings to the General Court.²

The Commissioners now settled down to work. Their first efforts were directed against the delinquents. A special blank form of writ was printed containing a declaration adapted to the case of the total delinquents who were assessed on the sixteenth of August.³ The setting up of the Bank by the defendant and many others, the issue of the bills, the abandonment of the scheme, the redemption of their proportionate shares by many of the subscribers and the neglect of others, were alleged in due form. The passage of the Act for finishing the scheme, and the power given the Commissioners under the Act to sue for assessments; the fact that an assessment was laid in August, of which the defendant had paid no part; the further fact that this assessment had been approved by the General Court; the notice by publication in accordance with the Act; the failure of the defendant to give notice of intention to appeal; and finally his failure to pay the assessment when demand upon him was made,—were also formally asserted. The instructions to the sheriff were to summon the defendant to appear.

Another writ was printed containing a declaration

¹ Court Records, $\frac{\text{XVII}}{4}$, 494.

² Court Records, $\frac{\text{XVII}}{4}$, 562.

³ Suffolk Files, 59,480.

adapted to the case of those assessed November eighth.¹ The sheriff was instructed to attach the property of the defendant or arrest his person in a suit at the hands of the Commissioners, appointed pursuant to an Act of the General Court to finish the Land Bank or Manufactory scheme. Then followed an allegation of the responsibility of subscribers to possessors under the Act of Parliament, whereby in equity and according to their mutual covenants, they were severally obliged to pay their ratable parts for the redemption of outstanding bills. The ratable parts of the several subscribers, the Commissioners, under the authority conferred upon them by the General Court, had assessed upon the partners, whereof the defendant was one, on the eighth of November, and in that assessment the defendant was assessed. Notice had been given by publication, report had been made to the General Court, and the proceedings had been approved, and the defendant thereby became chargeable for the assessed sum and had not paid the same.

The number of total delinquents assessed in August was thirty-~~six~~, and the number included in the assessment of November was forty-~~seven~~. It is evident, from the use of the summons to the defendant in the form for suits under the August assessment, that the Commissioners feared that the bodies of the defendants would be all that the sheriffs could produce in response to instructions to attach and arrest, and that the custody of these would not in their opinion advance the redemption of Land Bank notes.

They, perhaps, hoped for some results from suits against those assessed in November, and waited a little over a year before taking any other steps towards levying assessments. On the 27th of December, 1745, however, they levied a ten per cent. assessment upon all subscribers, including therein those against whom assessments had already been made,

¹ Suffolk Files, 59,757.

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and in due course of time thereafter sought to enforce collection of this assessment through the courts.

The first special blank form of writ that appears upon the files in connection with this assessment is addressed directly to the defendant,¹ summoning him to appear, and in the final clause is a statement that his goods have been attached. He is summoned to answer the Commissioners in a plea of debt, the claim being based upon an assessment laid under authority of the General Court, December 27, 1745, against subscribers for their ratable parts for the redemption of outstanding bills. Notice by publication is alleged, and the approval, February 7th, of the assessment by the General Court. Payment of the same, it is stated, has not been made by the defendant.

Another special blank was used which was addressed to the sheriff in the ordinary way, and contained the usual order to attach or arrest.² It contained allegations similar in substance to those of the next preceding form.

During the year 1746, the Commissioners were busy seeking to enforce the collection of their assessment of December, 1745. The tedious nature of the proceedings, and the general resistance which they met with, made the results costly and unproductive. At a later date one of the Commissioners reported that their work at this time tended rather to increase than diminish the debt of the Company.³ To add to their embarrassment, and to increase the confusion of their affairs, their books and papers were burned when the town-house was destroyed by fire in 1747.

It is not strange that we find that the General Court was made uneasy by this condition of affairs. All the original evidence, by means of which subscribers could be held, was gone. An order was introduced in the General Court in September, 1747, for a Joint Committee to consider and

¹ Suffolk Files, 61,673.

² Suffolk Files, 61,673.

³ Danforth's Report, Archives, 104, 324.

report what was necessary to be done for the further relief of those persons who were concerned in the Land Bank scheme,¹ but it does not appear that this Committee ever acted. In April, 1748, the Commissioners were called upon to make a report at the May session.² This they did on the 22d of June,³ stating that they were careful to keep an exact and minute account, not only of the several sums paid in by the partners and of the species in which payments were made, but also of the disbursements for purchasing and drawing in the Company's bills, and of the charges occasioned by the law suits, and otherwise. But as the books and papers containing all their entries and accounts were unhappily consumed with the court-house by fire, and the knowledge of many things transacted, thereby put beyond all possibility of being recovered, and there being no way that they knew of except by sight of the receipts given by the Commissioners to the partners, to ascertain what had been paid, they had given notice to partners to produce their receipts. Not more than one in a hundred had been brought in up to that time. They were therefore incapable of making the report which they were called upon to furnish. A Committee was thereupon appointed to consider the affair.

November 11, 1748, a bill was introduced the purpose of which was to overcome the difficulties in the way of settling the Land Bank, occasioned by the loss of the books and papers of the Commissioners, and January 3 the Governor gave his consent to the bill.⁴ The preamble recites the great difficulties experienced by the Commissioners, more especially those occasioned by the destruction of the books of the Company and of the Commissioners in the late burning of the court-house in Boston.

The first section of the act provides that the Commissioners shall as soon as may be make an assessment on

¹ Court Records, XVIII., 223.

³ Archives, 102, 332.

² Court Records, XVIII., 341.

⁴ Prov. Laws, III, 442, Ch. 16, 1748-9.

those persons mentioned in a list printed in the supplement of the *Boston Gazette*, 1745, which list is declared to contain a true and exact account of the partners in said Land Bank scheme. The assessment was to be adequate to redeem outstanding bills, to make good deficiencies, and to cover expenses. Receipts for payment on the previous assessment should be received as money by the Commissioners *pro tanto*. The assessment was to be printed in the weekly newspapers sixty days before its presentation to the General Court, after which publication the approval of the Court was required. The Commissioners could issue their warrants of distress against partners who failed to pay such assessment within sixty days after approval by the General Court. The form of the warrant of distress was then given.

Sheriffs, coroners and constables were required in section two to execute the warrants, and in section three instruction was given them as to the liability of the estates of deceased persons, who if living and in the province would have been compelled to respond. By section four, the Commissioners were to divide any surplus that they might collect among the partners. Section five provided for meetings of the Commissioners, and section six conferred upon them power to demand and receive papers.

The warrant of distress, which the Commissioners were by this act authorized to issue against delinquents, opened with a recital of the names of the Commissioners and their title. It was addressed to the sheriff, and proceeded to rehearse in detail the authority under which it was issued and the several facts that constituted a technical compliance with the Act, so that the responsibility of the defendant became thereby fixed. It then proceeded to require the officer to levy by distress upon the property of the defendant, giving detailed instructions as to surpluses and redemptions. It was evident that the Commissioners expected through the agency of these warrants to overcome the

obstacles which had hitherto prevented them from closing up the Company. They proceeded therefore in a hopeful mood to make an assessment, and at some time in the year 1749, submitted it to the General Court. The fact that such an assessment was made, appears from a report of one of the Commissioners,¹ who says, that some of the partners not being satisfied with it, prevailed on one branch of the General Assembly to withhold its approval, and the whole assessment thereby became invalid. Apparently no effort was made to substitute any other assessment for the one which failed of approval, and as this approval lay at the basis of all proceedings under the Act, the legislation of 1749 fell to the ground.

During this interval John Colman brought suit against the directors for a large sum, which he alleged to be due him from the Company. He was defeated in the Inferior Court, appealed, and the judgment was affirmed.²

In 1750, a petition of some of the partners was presented to the General Court for consideration. It was doubtless the outcome of this assessment. It was headed by John Brown, and was devoted to an arraignment of the directors of the Land Bank. We first hear of it April 4,³ when the House came up to the Council Chamber, and the hearing was opened in the presence of the whole Court. On the tenth and eleventh of the same month the hearing was concluded in the same manner.⁴ A Committee was then appointed⁵ to consider and report, and on the 11th of October⁶ John Quincy gave in the report of that Committee, which was in effect an order that the Commissioners submit some sort of a report, indicating as best they could the condition of the affairs of the Bank. This report was accepted, and in response to the order

¹ Danforth's Report, Archives, 104, 324.

² Suffolk Files, 66,842.

³ Court Records, XIX., 152, 153.

⁴ *Ibid.*, XIX., 163, 164.

⁵ *Ibid.*, XIX., 168, 202.

⁶ *Ibid.*, XIX., 244.

the Commissioners on the 15th of January, 1751,¹ filed an account of the state of affairs of the Company according to their best light. This report was referred to the Committee appointed to consider the petition of John Brown and others. On the 27th,² the House, where evidently was lodged the strength of the petitioners, showed signs of impatience, and voted that this committee be directed to sit forthwith and report as soon as may be. Again, on February 21,³ the House voted that the accounts of the Commissioners, the accounts of the directors as a collective body, and the accounts of delinquent partners, should be referred to a Committee, which should adjust and settle them and report thereon the first day of the next session of the Court. The Council non-concurred, and voted that a conference should be had between the two houses, and that John Quincy should represent the board at the conference. This conference was held the same afternoon, after which the Council adhered to their original vote with amendments and sent it down to the House. Finally, both houses agreed on the 22d⁴ upon a form defining the powers of a Committee to examine the question of the liability of the directors. This Committee was to examine and make strict inquiries into any moneys or other effects that might have been received by the directors of the Land Bank Company jointly and distinct from any money or effects with which they stood charged in their particular accounts. The accounts of the Commissioners were also referred to them, and they were to sit during the recess of the Court. On the 17th of April, 1751, John Wheelwright, in behalf of this Committee, reported,⁵ giving in detail the amounts which were found to be due to the Company from the several directors, which amounts it was said the directors and the heirs of

¹ Court Records, XIX., 257. ² *Ibid.*, XIX., 273. ³ *Ibid.*, XIX., 301, 302.

⁴ *Ibid.*, XIX., 304. Archives, 102, 565.

⁵ Archives, 102, 599. Court Records, XIX., 330.

deceased directors ought forthwith to pay to the Company. The Committee were further of the opinion that the proportionate share of a director for the finishing of the affairs of the Land Bank, was in addition to the foregoing amounts, forty pounds. They recommended the enforcement of assessments already laid, and the levying of another, if necessary. To accomplish this they recommended the passage of a new Act. The report was read, accepted and a Committee appointed, April 19,¹ to bring in a bill to accomplish these purposes. On the 24th such a bill, having been duly enacted, met with the approval of the Lieutenant-Governor.

The preamble to this Act recites the assessments of August 21, 1744, November 8, 1744, and December 27, 1745, and their publication.² It states the impossibility of ascertaining the exact sums paid by individual partners, in consequence of the burning of the court-house, in any other way than from evidence to be furnished by the partners themselves; and then goes on in the first section to declare that the partners are held to be liable for the payment of the sums mentioned in the publications of said assessments, unless they can furnish evidence of payment. Six per cent. interest was to be collected on all the assessments, and in order to meet charges caused by the non-payment of assessments, ten per cent. was added to the assessments of August and November, 1744, and five per cent. to that of December, 1745. In section two the directors were declared to be liable for the sums found to be due from them in Wheelwright's report, and the surviving directors and the estates of deceased directors were each assessed forty pounds Land Bank money. By section three these sums were to be paid before August 1, 1751, and if not then paid, the Commissioners were required forthwith to issue their warrants of distress, and

¹ Archives, 102, 600.

² Prov. Laws, III., 551, Ch. 23, 1750-1.

this notwithstanding there might be outstanding unsatisfied judgments of the courts theretofore obtained. The form of the warrant was given. Section four is devoted to the setting forth of the officers who were empowered and required to execute the warrants, and to instructions in case the assessed partners were deceased or out of the province. Three months were allowed for the redemption of real estate.

Under section five the Commissioners were authorized to make further assessments if it should become necessary. Such assessments were to be published, according to section six, in the *Boston Gazette or Weekly Journal*. Sixty days were allowed after publication for voluntary payment, and then the Commissioners were required, unless the assessment had in the meantime been set aside by the General Court, to issue forthwith their warrants of distress.

It is then alleged that in a previous Act the estates of partners were, after the publication of the assessment, held in the same manner as if they had been attached at the suit of a creditor. By the seventh section all lands which were bound by this clause, no matter in whose possession they might then be, were declared to be still subject to the payment of the assessment, and liable to be taken by distress. As soon as the Commissioners should have collected enough to redeem the outstanding bills, they were to give public notice of a time and place at which they would attend to redeem bills. Such public notice was declared to be a legal tender to possessors of bills.

The warrant of distress provided for in this Act was to be issued over the hands and seals of the Commissioners. The form was addressed to the sheriff. It recited the authority conferred in the act itself, and required the sheriff to levy by distress and sale of the estate of the defendant a certain sum, and bring the same to the Commissioners. If no estate could be found, the sheriff was to arrest the defendant and commit him to gaol until the

same should be paid. If real estate was attached three months were allowed for redemption. The return was to be made to the registry of deeds for record.

The Governor had refused consent to the first attempt at legislation directed towards closing the Land Bank, because the Company was too plainly recognized. He had refused consent to the first Act prepared for finishing the Land Bank, because it was too arbitrary. Ten years had elapsed since the arrival of the Act of Parliament, and beyond what had been accomplished by the Company itself, little progress had been made towards closing the affairs of the Company. With the law which was passed in 1751, the Commissioners could easily have wound up the Bank in 1743. It remained to be seen what could be done with such a law now. The Commissioners had a warrant of distress printed,¹ following the phraseology prescribed by the Act, and at once proceeded to test this question.

The delinquents had, however, in many instances taken steps to protect their property as best they could, and they had learned that this hasty legislation was full of flaws. In the country it was difficult to procure service of the warrants, and many of them were returned years after their issue without service.² "He is out of the Province"; "Cannot find estate"; "Dead, insolvent"; "Is dead, sold his estate in season, and was insolvent"; "Never lived in Worcester, but in Woodstock, and no estate can be come at"; "Sold in season, gone to Albany"; "Sold in season, died and left no estate"; and so on, with an occasional "paid formerly" by way of variation, such are the returns made to these warrants of distress.³

In 1752, Sheriff Pollard, of Suffolk County, in a memorial,⁴ addressed to the General Court, stated that as far as lay in his power he had levied the warrants of distress and had exposed the estates for sale, but by reason of a sup-

¹ Suffolk Files, 68,419.

³ Suffolk Files, 68,419, *et seq.*

² Report of Danforth, Archives, 104, 324.

⁴ Archives, 103, 44.

posed defect in the law, which did not in express words enable the sheriff to execute a conveyance with warrantee, those persons who had been inclined to bid at such sales were discouraged from so doing. Whereupon the memorialist felt it to be his duty to lay these facts before the Court.

The Council on the 14th of December, 1752,¹ ordered the appointment of a committee to take the matter of the memorial under consideration and to report a bill. The House non-concurred on the 15th, and ordered the memorial dismissed. On the 23d the House reconsidered this action, concurred with the Council and filled the Committee. January 3, 1753,² the bill was reported to the Council, and passed to be engrossed. April 7, the House ordered the Committee appointed December 23 to prepare a bill as soon as may be.³ On the 9th the Council concurred in this order. On the 12th this Committee was ordered by concurrent vote to sit forthwith and report thereon as soon as may be.⁴

On the 19th of June, a Committee of the General Court was appointed⁵ to inspect and examine the accounts of the Commissioners, and to report at the next sitting of the Court the present state of the accounts and what they judge proper to be done thereon.

December 21, 1753,⁶ an Act in further addition to the several laws in being for the more speedy finishing the Land Bank and Manufactory Scheme was passed by the Council to be engrossed. January 21, 1754,⁷ the House passed an order that a Joint Committee prepare a bill for this purpose, and the Council concurred in this order. April 13,⁸ such a bill was reported in the Council and read a first time. On the 19th it was passed⁹ in concur-

¹ Archives, 103, 44.

² Court Records, XIX., 523.

³ Archives, 103, 99.

⁴ Court Records, XX., 16, 21.

⁵ Archives, 103, 151.

⁶ Court Records, XX., 127.

⁷ *Ibid.*, XX., 177.

⁸ *Ibid.*, XX., 226.

⁹ *Ibid.*, XX., 231.

rence to be engrossed, and the same day the vote was reconsidered and the Council non-concurred. February 19, 1755,¹ the bill was revived, and on the 21st and 22d read a first and second time in the Council, and with an amendment was passed to be engrossed.² On the 25th, the House passed the bill a first, second and third time in concurrence,³ and on the 27th this bill became a law.⁴

The bill opens with the allegation that further provision is necessary to be made with regard to the sale of real estate of delinquents. The first section is retroactive in certain cases, as well as applicable to the future, and provides that if after levy on the real estate of a partner for a sum assessed upon him, the sheriff shall obtain from the register of deeds a certificate that prior to October, 1743, the said partner had not conveyed the estate to any other person, he shall be authorized and empowered after the time allowed for redemptions shall have elapsed to execute a warrantee deed to the purchaser. Section two gave to claimants the right to bring suit within one year from the date of the conveyance by the sheriff, and in the meantime such claimants were barred from any action of trespass or ejectment. Provision was made for the case of absence from the province or the legal incapacity of a claimant.

By the third section, the estates of all partners were made liable for the costs and charges which might arise from such conveyance. By the fourth section, an attested copy of a Land Bank mortgage was made good evidence in any suit upon such mortgage. By section five the powers of Commissioners, conferred by previous legislation, were declared not to be abridged by this Act. The most curious feature of this Act is the recognition of the mortgages given to the Land Bank.

On the 10th of March, 1758,⁵ John Jeffries and Samuel

¹ Archives, 103, 235.

⁴ Prov. Laws, III., 802, Ch. 24, 1754-5.

² Court Records, XX., 412, 415.

⁵ Court Records, XXII., 249.

³ Archives, 103, 307.

Danforth, two of the Commissioners, presented a petition to the General Court for a lottery as the most likely method for the speedy and effectual redemption of the bills still outstanding. This petition was referred to a Joint Committee. On the 18th,¹ this Committee reported that in their judgment it would be expedient to find out more exactly the value of the outstanding bills before taking any new steps towards their redemption. They further recommended that possessors should be required to bring in Land Bank bills to the Commissioners within a limited time; that the Commissioners should be required to mark bills thus submitted, so that they could be distinguished, and then return them to the owners; that a date ought to be fixed, after which it ought to be made a penal offence to pass any of the bills which had not been submitted to the Commissioners; that a lottery at present was undesirable.

The report was accepted and a Committee was appointed to prepare a bill in accordance with its suggestions. Such a bill was introduced and passed, and became a law March 27, 1758.²

Meantime the Commissioners were proceeding as best they could with the work of collecting the sums due from partners and directors. The character of the opposition which they met with is sufficiently indicated in the following extract from the *News-Letter* of August 24, 1758:—

To be sold at Public Auction at the Exchange Tavern in Boston TO-MORROW at NOON The Dwelling-House, Malt-House, and other Buildings, with the Garden and Land adjoining, and the Wharf, Dock and Flatts before the same, being Part of the Estate of the late Samuel Adams Esq. deceas'd, and is situate near Bull-Wharf, at the lower end of Summer-Street in Boston aforesaid, the said Estate being taken by Warrant or Execution under the Hands and Seals of the Honourable Commissioners

¹ *Prov. Laws*, XXII., 264.

² *Acts*, IV., 74, Ch. 28, 1757-8.

for the more speedy finishing the Land-Bank or Manufactory Scheme.

The Plan of the Ground and the Terms of Payment may be known by enquiring of

STEPHEN GREENLEAF.

To Stephen Greenleaf, Esq. ;

Sir,

I observe your Advertisement for the Sale of the Estate of Samuel Adams, Esq. Director of the late Land Bank Company—Your Predecessor Col. Pollard, had the same Affair in Hand five Years before his Death, but with all his Known Firmness of Mind, he never brought the Matter to any Conclusion, and his Precept, I am told, is not returned to this Day.—The Reason was—He, as well as myself, was advis'd, by Gentlemen of the Law, that his Proceeding was illegal and unwarrantable; and therefore he very prudently declined entering so far into this Affair as to subject his own Estate to Danger.—How far your Determination may lead you, you Know better than I.—I would only beg leave, with Freedom, to assure you, that I am advis'd and determined to prosecute in the Law, any Person whomsoever who shall trespass upon that Estate; and remain,

Your humble servant

August 16, 1758.

SAMUEL ADAMS.

In January, 1759, two of the partners, against whom executions had been obtained by possessors, petitioned the General Court for relief.¹ They were George Leonard, of Norton, who had been sued by James Otis, and Benjamin Jacob, of Scituate, who had been sued by Robert Treat Paine. The matter was referred to a Committee.

The examination of the outstanding bills in the hands of "possessors" so-called, revealed the fact that they amounted to less than one thousand pounds. No assessment had been laid, which had been permitted to stand, since December, 1745. The original Commission appointed in 1743 was composed of John Jeffries, Samuel Danforth, and John Chandler. The latter lived in Worcester, and very soon after the organization of the

¹ Archives, 103, 681, 683.

Commission resigned. In the Spring of 1759, Jeffries resigned, and it became necessary to reorganize the Commission. To accomplish this a new act was passed, in the preamble of which the various difficulties which had prevented the Commissioners from closing the affair were rehearsed, and the statement was made that the amount of bills then outstanding was nine hundred and ninety-five pounds.¹

The new Commission was composed of Thomas Goldthwait, Nathaniel Hatch, and Samuel Danforth, who were instructed in Section one to make an assessment of three thousand pounds, on such of the persons whose names were given in the published list in the supplement of the *Boston Gazette*, 1745, then living in the province, as they should judge of ability to pay the assessment. The assessment was to be published, and thirty days after publication was given for payment. Then the Commissioners were to issue executions against the estates of delinquents, and the form of the execution was given.

Section two of the Act was devoted to the redemption of bills. In section three authority was given the Commissioners to call sheriffs to account who neglect to serve warrants. Section four provided for a second assessment upon those whose names were not included in the first assessment. Section five gave the Commissioners power to dispose at private sale of seized estates under certain circumstances. Section six related to sessions of the Commissioners. Section seven was devoted to the protection of sheriffs. Persons who should purchase lands at the sales were debarred from bringing actions for damages against them.

In October, 1759,² the Council passed an order calling on town clerks and assessors to furnish certain information relative to partners, but the House non-concurred.

¹ Prov. Laws, IV., 189, Ch. 20, 1758-59.

² Court Records, XXIII., 60.

January 4, 1760,¹ a number of the directors and partners petitioned for a lottery in aid of the Land Bank, setting forth that the difficulties in the way of a fair adjustment of matters had always been great, and that the various vicissitudes which the Company and the Commissioners had experienced had so complicated affairs that relief of some sort was necessary. This petition was referred to a Committee which reported favorably on the 8th of February,² and submitted a draught of an act authorizing a lottery. The selectmen of the town of Boston were named as managers.

In the preamble to this Act, which was passed February 13, 1760,³ one reason alleged for permitting its passage was that a final period to the affairs of the Land Bank Company might be reached, and a stop put to the frequent applications to the Court in relation thereto, whereby the public affairs of the Province had been greatly interrupted. The managers were authorized to raise thirty-five hundred pounds by one or more lotteries. Details as to the methods of selling the tickets, carrying on the drawings and disposing of the money, were prescribed. The whole thing was to be completed within eighteen months from March 1, 1760. Instructions were given the Commissioners as to the application of the moneys which might be paid over to them by the managers, and they were directed during the term limited for finishing the lottery to forbear issuing any assessment.

The managers proceeded to carry out the lottery as best they could. Lotteries had been a favorite method of raising money for purposes which could not command pecuniary support, but just then were rather heavy on the market. The tickets were divided into three classes, and the drawings were to take place at different periods. As early as June, 1760,⁴ doubts arose whether the work of the

¹ Archives, 103, 439.

² Court Records, XXIII., 221.

³ Prov. Laws, IV., 288, Ch. 25, 1759-60.

⁴ Archives, 104-5. Court Records, XXIII., 393.

managers would not be wasted unless the Company itself could step in at the end and take in its own name the unsold tickets offered for a particular drawing. On the twelfth of June a resolve was introduced in the House, giving the Commissioners the power to take in behalf of the Company, at its risk and for its profit, unsold balances of tickets in the hands of the managers, provided the number of tickets thus taken did not exceed in value the net proceeds of those of the same class which had been sold. This resolve passed the House, and was duly concurred in by the Council.

When the eighteen months given for finishing the lottery had expired, there still remained in the hands of the managers about one-half the tickets of the third class. A resolve was therefore introduced in the House,¹ extending the time for the completion of the lottery for six months from December 1, 1761. This was duly passed, was concurred in by the Council, and consented to by the Governor.

This extension to the time for finishing the lottery expired June 1, 1762. The managers then represented that they still had a number of tickets unsold and that they could not finish the class they then had in hand, unless further time was given them. The first step taken was to pass in concurrence a resolution granting the request of the managers.² This was on the third of June. It evidently occurred to some of those interested that they had permitted the Act to expire before they had passed this resolve. A bill was therefore introduced reviving the former Act, and extending the date for finishing the work until December 1, 1762.³ This became a law June 12.

In the preamble to this Act it is stated that classes one and two had been drawn, and the greater part of the tickets for class three had already been sold.

¹ Court Records, XXIV., 138-9.

² Court Records, XXIV., 399.

³ Prov. Laws, IV., 583, Ch. 11, 1762-63.

On the ninth of September, 1762,¹ the managers again petitioned the General Court. Notwithstanding their best efforts, they still had on hand about thirteen hundred tickets. Under the authority given them the greatest number that they could place to the Company's account was about seven hundred. They must either abandon the proposed drawing or take the risk themselves. The postponement of the drawing would raise a general clamor. It was unreasonable to expect them as individuals to take any risk. They therefore asked for relief.

In response to this petition, it was voted and ordered that the drawing of the third class be postponed until Tuesday, the 28th of September, current.² That in the meantime the managers use their best endeavors to sell the rest of the tickets, and what should then remain unsold should be at the risk and profit of the Company. In case it should result in loss, the Commissioners were authorized "to hire y^e money on Interest to defray such deficiency to enable y^e managers to pay off y^e benefitt tickets." Authority was also given the Commissioners to assess the partners for the sum so deficient.

The lottery ultimately netted the Commissioners the sum £556. 15s. 6d.,³ less than a sixth of the sum authorized to be raised, and not enough to provide for the redemption of the bills. It became the duty of the second Commission to levy an assessment, and to collect the same.

On the eighth of September, 1763, they levied such an assessment on those of the partners living in the Province whom they judged able to pay, and after publication according to the terms of the Act, proceeded to issue their executions in the form prescribed by the Act. A special blank was printed for the purpose following the language of the Act.⁴

¹ Archives, 104, 235.

² Archives, 104, 237.

³ Archives, 104, 452. Report of Edward Sheaffe.

⁴ Suffolk Files, 83,629-1.

The outstanding bills now carried with them over twenty years' interest, and the Company was weighted down with the charges of these tedious and expensive proceedings. The greater part of the first assessment laid by the second Commission was readily collected, but when they proceeded to carry out the instructions given them in the Act and levy a second assessment upon the estates of those omitted in the first assessment, so as to raise money to refund those who had overpaid; to relieve those who had been compelled by possessors to redeem bills; and to defray charges, they experienced the same trouble as that which blocked the way of the assessment in 1749, and the Commissioners found themselves for the time powerless to do more.

June 15, 1764,¹ John Jewell and others, late partners, represented to the General Court, that in 1745 they had been assessed enough to redeem all outstanding bills, after which a lottery was granted, and since then a further assessment had been laid. That they had expected to be reimbursed instead of assessed, and they prayed for representation on a Committee which should examine, audit, and adjust the Commissioners' accounts. The House voted to grant the prayer of the petitioners, but the ~~Senate~~ non-concurred.

March 6, 1765,² Samuel Danforth, in behalf of himself and of the other Commissioners, submitted a narrative account of the various proceedings that had taken place in their efforts to adjust the affairs of the bank, the opposition they had met with, and the effect that it had produced. In the course of this narrative he uses language from which it may be inferred that the first assessment of the second Commission provided money enough to redeem all the outstanding bills. The second assessment was however resisted, and he prayed that the General Court would examine into affairs, make a reasonable allowance for the

¹ Court Records, XXIV., 266.

² Court Records, XXV., 418. Archives, 104, 324.

services of the Commission, and consider whether anything further could be done. This memorial was referred to a Joint Committee, which was afterwards authorized to sit in the recess of the Court and report at the next session.

If there was anything to be learned from the experiences of the Commissioners it was that there was no possibility of collecting the amounts still delinquent upon the assessments of 1744 and 1745. June 21,¹ the Committee apparently asked for more time, and they were then instructed to sit during the recess of the Court and report at the next session, and an order to that effect was passed.

January 30, 1766, the Committee to which Danforth's memorial was referred² reported that large amounts were delinquent on the old assessments, and that it was the first duty of the Commissioners to collect these amounts and also what was found in 1751 to be due from the directors. Meantime the last two assessments ought to be suspended. The Commissioners were also called upon to submit as full and clear a statement of the affairs of the Land Bank as the present circumstances would permit, to the General Court at their May session, 1766. This report was accepted and February 4 a Committee was appointed to bring in a bill according to its terms.

The Committee appointed to draught a bill, submitted its report to the Council February 19.³ Consideration of the same was referred by the House to the next session.

February 21,⁴ it was voted to call upon the several Commissions to finish the Land Bank, to lay before the General Court at the next session, a general statement of its affairs and a particular account of their several charges.

February 26, 1767,⁵ Edward Sheaffe, in behalf of a Committee to which had been referred the examination of the late Land Bank, filed an elaborate report, covering the

¹ Archives, 104, 324, *et seq.*

² Archives, 104, 370.

³ Court Records, XXVI., 185.

⁴ *Ibid.*, 192.

⁵ Archives, 104, 452.

history of the winding up of the Bank, and showing the amount which the Commissioners must account for.

The accounts of the first Commissioners were laid before the House, March 4, 1767,¹ and were referred to a committee to consider and report, and next day the order of reference was made to include the reports of both commissions.² [Friday?] March 14,³ the Council proposed to the House to adjourn until Monday and that the Committee on Land Bank affairs should sit forthwith. To this the House agreed. March 17,⁴ the report of the Committee was read in Council and sent down. March 19,⁵ the House voted that a Committee consisting of Capt. Sheaffe and two others and such as the Board might add should be a Committee to sit in the recess of the Court, to examine the accounts of the Commissioners of both commissions, to hear directors and partners, and to report at the May session what they should deem proper as to the accounts, and as to what was necessary to put an end to the scheme. The Council concurred in this resolve and named two members to serve on the Committee.

March 20, 1767,⁶ Danforth and Hatch having resigned and Goldthwait having removed to such a distance that he could not conveniently attend meetings, the two Houses met and chose three Commissioners.

On the same day,⁷ a Committee was appointed by concurrent vote of both Houses, to bring in a bill to empower Edward Sheaffe, Samuel Dexter and James Humphreys, Esquires, who had been chosen Commissioners for settling the Land Bank Company, to execute the trust to which they were appointed. The Committee reported the same day, and the bill became a law. The various powers and duties conferred upon the previous Commissioners were,

¹ Court Records, XXVI., 451.

² *Ibid.*, XXVI., 455.

³ *Ibid.*, XXVI., 486.

⁴ *Ibid.*, XXVI., 492.

⁵ Archives, 104, 438.

⁶ Court Records, XXVI., 501.

⁷ Archives, 104, 443.

by this Act, extended to the new Commissioners,¹ but until further order of the Court their functions were limited to the collection of assessments already levied. They were from time to time to report progress to the General Court.

The Committee appointed March 19 reported through Thomas Flucker, June 5, 1767.² The substance of this report is that there was £1,740. 7s. 3d. due from the directors to the partners, with interest from September 9, 1740, which the Committee thought should be paid in equal proportion by the surviving Directors, and by the estates of the deceased Directors, allowance being made for what had been paid by the Directors towards the assessment of 1763. In addition to the foregoing, there were certain specific sums which had previously been found to be due from individual Directors, these also were said to be due.

Those sums and what could be collected from delinquents, the Committee were of opinion should be applied in satisfaction of the debts of the Company. They believed it to be impracticable to attempt any relief of partners who believed that they had been unjustly assessed. To accomplish what the Committee advised, they recommended that a new bill be brought in. Consideration of this report was on the 25th of June postponed to the next session.³

In December, 1767, Jeffries and Danforth filed a new account.⁴ In 1751, the Committee of which John Wheelwright was chairman, had made a report, and certain of their findings had been accepted. The Commissioners, therefore abandoning any attempt to make an exact statement prior to the loss of their papers accepted the findings of Wheelwright's committee as final, and filed their accounts covering the period after April, 1751. They prayed that these be accepted, and that they might be discharged.

¹ Province Laws, IV., 919, Ch. 19, 1766-67.

² Archives, 104, 449.

³ Archives, 104, 483.

⁴ Archives, 104, 495.

The reports of the Commissioners specified as follows: one signed Samuel Danforth and Nathaniel Hatch, one signed John Jeffries, and one signed Samuel Danforth, were, on the 5th of January, 1768, referred to a Committee for consideration and report.¹

January 14, the hearing of the partners and directors which was to have taken place by appointment at the previous session, was postponed.² On the 21st, it was again postponed.³ On the 27th, the hearing was held in the Representatives' Room, the Council being there present.⁴ At this hearing, an exception was taken by Mr. Auchmuty to the propriety of the General Court taking cognizance of the matter. The hearing was therefore, on the 28th adjourned to the next week, and Mr. Auchmuty was directed to proceed at that time to apply the rules of law he had advanced to the particular case under consideration. All other parties concerned were, at the same time, entitled to be heard by counsel learned in the law. Mr. Auchmuty was requested to reduce his pleas to the jurisdiction of the Court, to writing, and to file the same in the office of the Secretary.

February 4,⁵ there was an interchange of courtesies between the two Houses. The Council notified the Board that it was ready to join the House in hearing Mr. Auchmuty if he desired to be heard further upon the subject. The House in return inquired of the Council if they had settled the point raised by Mr. Auchmuty as to the jurisdiction of the General Court. The Council replied that they had only settled the point of jurisdiction so far as to be willing to hear Mr. Auchmuty's arguments on that point, if he was desirous of presenting them. The next day, the Board called for the reports on Land Bank affairs,⁶ and the papers which had accompanied them.

¹ Court Records, XXVII., 120.

² Archives, 104, 510.

³ Archives, 104, 515.

⁴ Court Records, XXVII., 162, 163.

⁵ Court Records, XXVII., 179.

⁶ Court Records, XXVII., 180.

The questions which perplexed the General Court may be inferred from the form in which was passed on February 6, a resolve originally introduced on the 3d of February.

The following was the form in which it went through:¹

In the House of Representatives, February 3, 1768.

The House having taken into consideration the plea offered by Robert Auchmuty, Esq., to the jurisdiction of this Court, in the hearing ordered to be had before the whole Court, on Wednesday, the 27th of January last, which hearing was then had before the two Houses only (His Excellency having been prevented being present, by indisposition). Upon the report of a committee of both Houses, the last session, wherein the Committee reported that a Bill be brought in to assess the sum of seventeen hundred and forty pounds 7/3 with interest from September 9, 1740, on the late Directors of the Land Bank Company as due to the Partners of said Company. The said plea having been duly considered and it appearing that the jurisdiction of this Court, in the case mentioned, hath been already established by sundry Acts of Parliament which have received the Royal sanction, Resolved, that this Court will proceed to a hearing of the said affair, on Tuesday next, the 9th instant, at ten o'clock in the forenoon, upon the merits of the case. And that the parties concerned may then have liberty of being heard by themselves or by counsel learned in the law.

An affidavit was made by George Leonard, February 8,² at the request of Robert Auchmuty, to the effect that in October, 1740, an agreement was circulated among the partners, authorizing the use of a certain proportion of their bills in trade; that he personally declined to participate in the trade. At the same time, Robert Auchmuty openly refused to have anything to do with the trade. That both he and Auchmuty declined to serve upon the committee for the adjustment of the affairs of the Bank. That five of the directors were appointed to receive and burn the bills, whose names he gave to the best of his recollection. Feb-

¹ Archives, 104, 518.

² Archives, 104. 520.

ruary 9,¹ the hearing appointed by the resolve of the 6th took place. Auchmuty claimed that the committee of the General Court in 1751 settled all accounts between the directors and partners² and that the payment by the directors of the balances then found to be due from them must protect them from any further demands on account of said Bank. Until the Court should determine whether this point was sustained, Auchmuty declined to proceed further in his defence.

The Court declined, on the 10th of February,³ to express any opinion upon this point until they should have heard all that Auchmuty had to offer, and appointed the next succeeding Friday at ten o'clock, for a hearing, when the Committee were requested to be present and explain their reasons for finding the sums said to be due from the directors, and when opportunity would be afforded for all concerned to be heard. On the 12th,⁴ the Committee were ordered to reduce to writing the reasons upon which they framed their report, and to serve a copy on Auchmuty. Auchmuty was also ordered to reduce his answer thereto to writing and to lay the same before the Court before Friday, the 19th of February.

On the 20th,⁵ the report of the Committee on the affairs of the Land Bank was read and recommitted.

On the 26th,⁶ the Committee to which the reports of the Commissioners had been referred, reported. A Committee was appointed on the part of the House, March 1,⁷ to take the accounts under consideration, to sit during recess, to hear Commissioners, directors and partners, and to report next session what should be allowed each Commissioner for his services. The Council concurred in this action on the 3d of March, and completed the Committee.

¹ Court Records, XXVII., 185.

² Archives, 104, 523.

³ Archives, 104, 523.

⁴ Archives, 104, 525.

⁵ Court Records, XXVII., 228.

⁶ Archives, 104, 533.

⁷ *Ibid.*

On the 3d of March,¹ an order was passed authorizing the Committee which was appointed February 12, to reduce to writing the facts and reasons upon which they framed their report relative to the Land Bank Company and which had not been able to conclude its work, to prepare the same during recess of the Court, to serve a copy on Robert Auchmuty, so that the directors might make answer at the May session.

There is a report on file² which deals with the question of the liability of the directors and which may be the report of this Committee. It is not dated and is not signed, and its character and purpose can only be identified by its contents.

Under date of June 7,³ the following entry is to be found:—

In Council. The Committee appointed the last session of the General Court to reduce to writing the reasons and evidence upon which their report relative to the Land Bank or Manufactory Scheme was founded, and to deliver the same to Robert Auchmuty, Esq., made report of their doings thereon, and thereupon ordered that the same be considered on Friday next, at ten o'clock in the forenoon, and that Robert Auchmuty be notified of this order, that he may then put in a reply thereto if he see cause.

In the House of Representatives, read and concurred.

The foregoing is the last entry in the records of the Court in which the affairs of the Land Bank are under consideration of the legislators. One other entry, made two years thereafter, would indicate that in the interim the whole thing had permanently disappeared. On the 9th of November, 1770,⁴ a petition was presented by Samuel Dexter, James Humphreys and Edward Sheaffe, for certain allowances for services and for expenses incurred by them in the examination of the affairs of the Land Bank in 1766

¹ Archives, 104, 539.

² *Ibid.*, 104, 508.

³ Court Records, XXVII., 321.

⁴ Court Records, XXVIII., 359. Archives, 104, 443.

and 1767. These three men constituted the Commission to finish the Bank, appointed March 20, 1767. The application for pay apparently covers their services as committeemen prior to their appointment as Commissioners, and they ask that the allowance be made out of the public treasury. Among the items included is the bill of Seth Blodget,¹ for rooms, attendance, wine, dinners and punches. The amount consumed by the Committee, when stated in old tenor, is appalling. £57, 18, 9, mainly for drinks, at fifteen sessions of a committee of three, would apparently task the services of the most experienced trencher-men of the day, but this sum when reduced to lawful money dwindles to £7, 14, 6, an amount not after all so great as to tax even modern credulity. The consideration of a portion of this petition was referred to the next session. The habit in that respect was confirmed, and the last record that we have of the Land Bank is that an application for pay for services of a committee investigating its affairs, no longer directed against its funds but this time made upon the public treasury, is to come up at the next session amongst the unfinished business.

¹ Archives, 104, 440.

